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IN THE

Supreme Court of the United States

October Term, 1971

NO. 70-54

VICTORY CARRIERS, INC., SS SAGAMORE HILL and GULF STEVEDORE CORP., *Petitioners*

v.

BILL LAW, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF ON BEHALF OF THE NATIONAL MARITIME COMPENSATION COMMITTEE AS AMICUS CURIAE

E. D. Vickery
Royston, Rayzor & Cook
3710 One Shell Plaza
Houston, Texas 77002

Dennis Lindsay
Lindsay, Nahstoll, Hart, Duncan, Dafoe & Krause
Ninth Floor, Loyalty Building
Portland, Oregon 97204

Francis A. Scanlan
Kelly, Dessey & Scanlan
926 Four Penn Center Plaza
Philadelphia, Pennsylvania 19103

J. Stewart Harrison
Brobeck, Phleger & Harrison
111 Sutter Street,
San Francisco, California 94104

Counsel for National Maritime Compensation Committee

Alpha Law Brief Co., M & M Bldg., Houston, Texas 77002

SUBJECT INDEX

	Page
Consent of Parties	1
Statement of Interest	2
Question Presented	3
Argument	5
Court Below Did Not Comprehend Reasons on Which Law of *Mahnich, Hawn, Sieracki* and *Gutierrez* is Based	5
Shipowner's Warranty of Seaworthiness Extends Only to the Vessel's Own Seagoing Cargo Gear	12
Attempted Justification for Extension of Warranty Ashore is Unsound	14
Extension of Admiralty Tort Jurisdiction to Accidents on Land is Unprecedented	19
Conclusion	21
Certificate of Service	22

LIST OF AUTHORITIES

CASES

	Page
Alaska Steamship Company, Inc. v. Petterson, 347 U.S. 396, 98 L.Ed. 798, 74 S.Ct. 601 (1954), affirming 205 F.2d 478 (9 Cir. 1953)	13, 14
Chagois v. Lykes Bros. Steamship Co., Inc., 5 Cir. 1970, 432 F.2d 388, petition for writ of certiorari pending as No. 70-64, October Term, 1971, Lykes Bros. Steamship Co., Inc., Petitioner v. Joseph Chagois, Respondent	4, 10
Daniel v. Skibs A/S Hilda Knudsen, 3 Cir. 1966, 368 F.2d 178, cert. den. 386 U.S. 990, 18 L.Ed2d 335, 87 S.Ct. 1304 (1967)	17

CASES

Page

Deffes v. Federal Barge Lines, Inc., 5 Cir. 1966, 361 F.2d 422, cert. den. 385 U.S. 969, 17 L.Ed.2d 433, 87 S.Ct. 504 (1966) 16

DeLovio v. Boit, CC D Mass., 2 Gall 398, 7 Fed. Cas. No. 3776 (1815) 19

Forkin v. Furness, Withy & Co., Ltd., 2 Cir.1963, 323 F.2d 638 17

Fredricks v. American Export Lines, Inc. 1955, 227 F.2d 450, cert. den. 350 U.S. 989, 100 L.Ed. 855, 76 S.Ct. 475 (1956) 17

Gebhard v. SS HAWAIIAN LEGISLATOR, 9 Cir. 1970, 425 F.2d 1303 ..... 16, 20

Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469, 66 L.Ed 321, 42 S.Ct. 157 (1922) 19

Gutierrez v. Waterman Steamship Corp., 373 U.S. 206, 10 L.Ed.2d 297, 83 S.Ct. 1185, reh. den. 374 U.S. 858, 10 L.Ed.2d 1082, 83 S.Ct. 1863 (1963) 5, 7, 8, 14

Italia Societa Per Azioni di Navegazione v. Oregon Stevedoring Company, Inc., 376 U.S. 315, 11 L.Ed.2d 732, 84 S.Ct. 748 (1964) 13, 14

Mahnich v. Southern Steamship Company, 321 U.S. 96, 88 L.Ed. 561, 64 S.Ct. 455 (1944) 5, 7, 11

McKnight v. N. M. Patterson & Sons, Ltd., 6 Cir. 1960, 286 F.2d cert. den. 368 U.S. 913, 7 L.Ed.2d 130, 82 S.Ct. 189 (1961) 17

Nacirema Operating Co. v. Johnson, 396 U.S. 212, 24 L.Ed.2d 371, 90 S.Ct. 347 (1969), reh. den. 397 U.S. 929, 25 L.Ed.2d 109, 90 S.Ct. 895 ..... 3, 19, 20

O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 87 L.Ed. 596, 63 S.Ct. 488 (1943) 19

Paisley Green v. Pope & Talbot, Inc., Admiralty No. 4809, U.S.D.C. Maryland 20

CASES

Page

Partenweederei, MS Belgrano v. Weigel, 9 Cir. 1962, 299 F.2d 897, cert. den. 371 U.S. 830, 9 L.Ed.2d 67, 83 S.Ct. 49 (1962), reh. den. 371 U.S. 906, 9 L.Ed.2d 168, 83 S.Ct. 205 (1962), motion for leave to file second petition for reh. den. 375 U.S. 871, 11 L.Ed.2d 101, 84 S.Ct. 26 (1963) 18

Penoro v. Rederi A/B Disa, 2 Cir. 1970, 422 F.2d 392 17

Philadelphia, Wilmington & Baltimore RR v. The Philadelphia & Harve De Grace Steam Towboat Co., 23 How 209, 16 L.Ed. 433 (1860) 19

Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 98 L.Ed. 143, 74 S.Ct. 202 (1953) 5, 6, 8, 14

Rogers v. United States Lines, 347 U.S. 984, 98 L.Ed. 1120, 74 S.Ct. 849 (1954), reversing 205 F.2d 57 (3 Cir. 1953) 13, 14

Seas Shipping Company, Inc. v. Sieracki, 328 U.S. 85, 90 L.Ed. 1099, 66 S.Ct. 872 (1946) 5, 6, 7, 8, 11, 14

Spann v. Lauritzen, 3 Cir. 1965, 344 F.2d 204, cert. den. 382 U.S. 938, 15 L.Ed.2d 348, 86 S.Ct. 386 (1965) 16

Tarabocchia v. Zim Israel Navigation Co., Ltd., 2 Cir. 1969, 417 F.2d 476, remanded for reconsideration on other grounds, ____U.S.____ 28 L.Ed.2d 211, 91 S.Ct. 914 (1971) 17

United New York and New Jersey Sandy Hook Pilots Association v. Halecki, 358 U.S. 613, 3 L.Ed.2d 541, 79 S.Ct. 517 (1959) 4

Usner v. Luckenbach Overseas Corp., 400 U.S. 494, 27 L.Ed.2d 562, 91 S.Ct. 514 (1971) 19

UNITED STATES STATUTES

33 U.S.C. § 901 20

33 U.S.C. § 903(a)(1) 19

46 U.S.C. § 740 19

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BRIEF ON BEHALF OF THE NATIONAL MARITIME COMPENSATION COMMITTEE AS AMICUS CURIAE

To The Honorable Judges Of Said Court:

CONSENT OF PARTIES

All of the parties in this case have given their written consent to the filing of this Brief Amicus Curiae and such written consent has been filed with the Clerk.

STATEMENT OF INTEREST

The National Maritime Compensation Committee is a nationwide organization whose membership is composed of representatives of the following seventeen maritime associations from substantially all of the martime centers in the United States:

Boston Shipping Association, Inc.
Great Lakes Terminal Association
Hampton Roads Maritime Association, Inc.
Lake Carriers Association
Master Contracting Stevedores Association of the Pacific Coast, Inc.
Mobile Steamship Association, Inc.
National Association of Stevedores
New Orleans Steamship Association
New York Shipping Association, Inc.
North Atlantic Ports Association
Pensacola Steamship Association
Philadelphia Marine Trade Association
Portland Shipping Association, Inc.
Savannah Maritime Association
Steamship Trade Association of Baltimore, Inc.
Tampa Steamship Association
West Gulf Maritime Association

In turn the membership of these maritime associations include substantially all of the different types of employers who furnish shore based employees and shore based equipment to perform various services for shipowners while their vessels are in port.

The National Maritime Compensation Committee was formed by these employer groups as a means of making known, primarily to the Congress, the views of substantially all segments of the maritime industry in connection with legislation relating to the compensation of their em-

ployees who are injured in the course of their employment.[1]

The National Maritime Compensation Committee is a particularly appropriate organization to file this Amicus Curiae Brief in order to acquaint this Court with the views of the employers in substantially all segments of the maritime industry as a whole.[2]

QUESTION PRESENTED

This case presents a question of first impression in this Court:

> Does the shipowner's warranty of the seaworthiness of its vessel to an injured longshoreman extend to the stevedore's shore based equipment being used ashore which is not usually and customarily furnished by the ship and which has not been incorporated into or been substituted for the ship's seagoing cargo gear at the time of the accident?

In the present case, Longshoreman Law was injured because of a defect in the stevedore's shore based forklift truck which was being used to move cargo from the dockside warehouse onto the dock apron from whence it would

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1. The National Maritime Compensation Committee is registered pursuant to the Federal Regulation of Lobbying Act.

2. In one other case involving an equally important issue to the maritime industry as a whole, the National Maritime Compensation Committee filed a Brief Amicus Curiae to acquaint the Court with the views of its members with respect to the problems involved. See *Nacirema Operating Co. v. Johnson,* 396 U.S. 212, 24 L.Ed.2d 371, 90 S.Ct. 347 (1969), reh. den. 397 U.S. 929, 25 L.Ed.2d 109, 90 S.Ct. 895, in which this Court held that longshoremen injured on the dock as an extension of the land were not entitled to recover under the Longshoremen's & Harbor Workers' Compensation Act, 33 U.S.C.A., §901 ff, but, just like every other shorebased worker, only under the state workmen's compensation act.

be loaded aboard the vessel. The Court below held that the defendant shipowner's warranty of the seaworthiness of its vessel extended to a contract stevedore's forklift truck while it was thus being used on the land.

Only two weeks later the Court below extended the shipowner's seaworthiness warranty even further ashore in the *Chagois* case.[3] Longshoreman Chagois was injured by a defective screw auger being used to unload rice from a railroad car into the hopper of a grain elevator conveyor which then carried the rice to the ship's hold. The Court below held that the shipowner's warranty of the seaworthiness of its vessel extended to the stevedore's screw auger being used to unload the railroad car.

In these two decisions the Court of Appeals below has extended the shipowner's warranty of the seaworthiness of its vessel to shore-based equipment being used entirely ashore, which it neither owned, operated nor controlled, and which might be utilized for the movement of cargo on the dock or in the warehouse (*Law*) or in a grain elevator conveyor or even in a railroad car (*Chagois*).

This Court declined to so unrealistically extend a shipowner's warranty of the seaworthiness of its vessel in another case to shore side equipment and materials being used aboard a vessel, because in the words of Justice Stewart, it

> ". . . would distort the law of Mahnich, of Hawn and of Sieracki beyond recognition."[4]

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3. *Chagois v. Lykes Bros. Steamship Co., Inc.*, 5 Cir. 1970, 432 F.2d 388, petition for writ of certiorari pending as No. 70-64, October Term, 1971, *Lykes Bros. Steamship Co., Inc., Petitioner v. Joseph Chagois, Respondent.*

4. *United New York and New Jersey Sandy Hook Pilots Association v. Halecki*, 358 U.S. 613, 3 L.Ed.2d 541, 79 S.Ct. 517 (1959).

These two recent decisions of the Court of Appeals below, however, have produced precisely such a distortion, not only of *Mahnich*,[5] of *Hawn*[6] and of *Sieracki*,[7] but of this Court's later decision in *Gutierrez*[8] as well. It is therefore respectfully submitted that this case should be reversed and this distortion of the law corrected.

ARGUMENT

COURT BELOW DID NOT COMPREHEND REASONS ON WHICH LAW OF *MAHNICH, HAWN, SIERACKI* AND *GUTIERREZ* IS BASED

The decisions of the Court of Appeals below result from its apparent failure to comprehend fully the basis on which this Court has extended a shipowner's warranty of the seaworthiness of its vessel to certain shore based workers who perform services for the vessel while it is in port.

The shipowner's absolute and non-deligible duty to furnish a seaworthy vessel to the "men who go down to the sea in ships" was extended to longshoremen injured while working aboard a ship in navigable waters in *Sieracki* as this Court stated, because

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5. *Mahnich v. Southern Steamship Company*, 321 U.S. 96, 88 L.Ed. 561, 64 S.Ct. 455 (1944).

6. *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 98 L.Ed. 143, 74 S.Ct. 202 (1953).

7. *Seas Shipping Company, Inc. v. Sieracki*, 328 U.S. 85, 90 L.Ed. 1099, 66 S.Ct. 872 (1946).

8. *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206, 10 L.Ed.2d 297, 83 S.Ct. 1185, reh. den. 374 U.S. 858, 10 L.Ed.2d 1082, 83 S.Ct. 1863 (1963).

> ". . . For these purposes he is, in short, a seaman because he is doing a seaman's work *and incurring a seaman's hazards.*" (Emphasis supplied)[9]

Yet in extending the shipowner's warranty to the stevedore's shore based forklift truck in this case, the Court below did so solely because it concluded Longshoreman Law was "doing a seaman's work." In so doing, it completely disregarded the most important factor—he was not "incurring a seaman's hazards". *Sieracki* makes it perfectly clear that the shore based worker must not only be doing a seaman's work but must be incurring a seaman's hazards as well.[10]

In *Hawn* this Court reaffirmed this underlying criteria:

> ". . . His (carpenter working aboard the ship) need for protection from unseaworthiness was neither more nor less than that of the stevedores then working with him on the ship or of seamen who had been or were about to go on a voyage. *All were subjected to the same danger. All were entitled to like treatment under law.*" (Emphasis and parenthetical expression supplied)[11]

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9. *Seas Shipping Company, Inc. v. Sieracki,* 328 U.S. 85, at page 99, 90 L.Ed. 1099, at page 1109, 66 S.Ct. 872 (1946). Thus was born what is now commonly called a "Sieracki seaman."

10. For example, a shipowner has a shorebased employee who works in a dockside warehouse splicing various ropes and cables to be used as mooring lines aboard its vessels. While he is clearly doing a seaman's work he is just as clearly not incurring a seaman's hazards. If he were injured while bringing a new coil of rope to his work room on a forklift truck because the forklift was defective, he would not be entitled to impose liability on the shipowner based on the doctrine of unseaworthiness since he was not incurring a seaman's hazards. Numerous other examples could also be given of shorebased employees who do seaman's work, but do not incur seaman's hazards.

11. *Pope & Talbot, Inc. v. Hawn,* 346 U.S. 406, at page 413, 98 L.Ed. 143, at page 153, 74 S.Ct. 202 (1953).

Indeed the only justification for the doctrine of unseaworthiness (with its rigid and inflexible absolute liability without fault standard) is based entirely on the "hazards" or "dangers" encountered by "non-Sieracki seamen". This Court so stated this to be the justification in *Mahnich*:

> ". . . *We have often had occasion to emphasize the conditions of the seamen's employment,* see Socony-Vacuum Oil Co. v. Smith, supra (305 U.S. 430, 431, 83 L.Ed. 269, 270, 59 S.Ct. 262) and cases cited, *which have been deemed to make him a ward of the admiralty and to place large responsibility for his safety on the owner.* He is subject to the rigorous discipline of the sea, and *all the conditions of his service constrain him to accept, without critical examination and without protest, working conditions and appliances as commanded by his superior officers.*" (Emphasis supplied)[12]

Nor does this Court's decision in *Gutierrez* alter to any extent these two *Sieracki* criteria. Gutierrez expressly rec-

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12. *Mahnich v. Southern Steamship Company,* 321 U.S. 96, at page 103, 88 L.Ed. 561, at page 567, 64 S.Ct. 455 (1944). In the *Smith* case cited in the above quotation from *Mahnich,* this Court stated this justification in somewhat greater detail as follows:

> "The seaman, while on his vessel, is subject to the rigorous discipline of the sea and has little opportunity to appeal to the protection from abuse of power which the law makes readily available to the landsman. His complaints to superior officers of unsafe working conditions not infrequently provoke harsh treatment. He cannot leave the vessel while at sea. Abandonment of it in port before his discharge, to avoid unnecessary dangers of employment, exposes him to the risk of loss of pay and to the penalties for desertion. In the performance of duty he is often under the necessity of making quick decisions with little opportunity or capacity to appraise the relative safety of alternative courses of action. Withal, seamen are the wards of the admiralty, whose traditional policy it has been to avoid, within reasonable limits, the application of rules of the common law which would affect them harshly because of the special circumstances attending their calling."

ognized that which this Court had indicated in dictum in *Sieracki*— when the unseaworthiness of a vessel's cargo containers create a dangerous condition on the dock alongside the vessel, a "Sieracki seaman" is entitled to recover against the shipowner—not because the dock itself is unseaworthy—but because the vessel's cargo containers are unseaworthy, thus exposing the longshoremen on the dock to a seaman's hazards.[13]

What has been overlooked or completely ignored by the Court of Appeals below is that *Sieracki, Hawn* and *Gutierrez* extended the unseaworthiness doctrine to shoreside workers only if they met these two criteria:

1. ". . . doing a seaman's work. . . ."
and
2. ". . . incurring a seaman's hazards."

In extending the shipowner's unseaworthiness liability to shore based equipment furnished by the stevedore, the Court of Appeals below did so solely on the grounds that

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13. *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206, at page 214, 10 L.Ed.2d 297, at page 303, 83 S.Ct. 1185 (1963). The cases cited and relied on by this Court reaffirm this "seaman's hazards" criteria:

1. In *Strika* the longshoreman was injured while on the dock because of an unseaworthy wire cable which was a part of the ship's seagoing cargo gear caused a hatch cover on the vessel to fall on him. 185 F.2d 555 (2 Cir. 1950).
2. In *Robillard,* "because of unseaworthy stowage and overladen drafts" the longshoreman was injured by cargo knocked off the deck of the vessel onto the pier. 186 F.Supp. 193 (D.C.N.Y. 1960).
3. In *Cordray,* the longshoreman was injured while on board the vessel because of an unseaworthy wire strap which was a part of the ship's seagoing cargo gear. 258 F.2d 214 (9 Cir. 1958).
4. In *Hagans,* a defective ship's winch caused sacks of beans to strike a longshoreman on the pier, 237 F.2d 477 (3 Cir. 1956).

the longshoremen were "doing a seaman's work". That is, they were involved in moving cargo on the dock or in the railroad car which was to be loaded on the vessel. While that Court quoted the second criteria of *Sieracki*—"incurring a seaman's hazards"—it did not in fact give any consideration to it in relation to the equipment being used or the facts or circumstances of the accidents.

It did not discuss what "seaman's hazards" Longshoreman Law faced in this case which created a danger to him that he would not also have faced had he been working in a gang of warehousemen using the same forklifts rearranging cargo in the same warehouse destined for loading aboard a vessel at some time in the future. It did not, obviously because there were no hazards or dangers which were in any way peculiar to his work as an alleged "Sieracki seaman", as Longshoreman Law was subjected to no greater risk of injury than countless numbers of forklift operators working in land locked warehouses throughout the country.

Longshoreman Law faced precisely the same hazards as any other shore based worker (whether working in a port city or one located at the foothills of the Rocky Mountains) who is employed in a warehouse that uses forklifts to move its merchandise or products in, or out, or inside of the warehouse. Had Law been using the forklift to take the cargo to precisely the same point on the dock for loading onto a motor truck or a railroad car, the hazards or dangers would have been precisely the same as they were with the vessel at the dock. It is clear that neither railroads nor truck lines warrant that such a forklift will be free of all defects (seaworthy) even though the hazards or dangers which Law faced are precisely the same. Yet the fortuitous circumstance that his ship was

moored at the dock is enough to cause the Court below to cast the shipowner in liability on the grounds that it warrants the seaworthiness of the stevedore's forklift.

But the *Chagois* case points up even more dramatically the injustice being done to shipowners by this unrealistic extension of the vessel's warranty ashore. A railroad car (not the ship) containing rice in bulk was being unloaded with a screw auger furnished by the stevedore. The shore based worker was injured while working in the railroad car because this screw auger was "unseaworthy". No one contends, or could contend, that the railroad was liable without fault to Longshoreman Chagois because of the "unseaworthy" screw auger. But the Court below holds the shipowner liable on the grounds that its warranty of the seaworthiness of its vessel extends to this railroad car unloading equipment. And it does so even though Chagois was incurring no more hazards or dangers than those incurred by a railroad worker or grain elevator employee who use such equipment regularly deep in the grain country of our Midwestern states. It is a most strange and peculiar law indeed which requires the shipowner to warrant the safety of equipment being used to discharge the railroad car but imposes no duty whatsoever on the railroad who owns the car which is being unloaded.[14]

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14. In many, if not most, instances railroad cars of grain are unloaded into a grain elevator in advance of the arrival of the ship in port on which it is to be carried. The loading of the cars in Kansas and the unloading of the railroad cars into the grain elevator at the port city are an integral part of the process of moving the grain along on its journey which culminates in its being loaded aboard a vessel. Should the shipowner's warranty of the seaworthiness of its vessel which is still on the high seas extend to the loading equipment in Kansas or to a screw auger being used to unload the railroad cars into the grain elevator at the port city? Obviously not, the absurdity of such a holding is patent. Yet the fortuitous circumstance that the vessel was already at the dock was enough to cast the shipowner in liability in *Chagois*.

Thus although it may be said that Law and Chagois were "doing a seaman's work" in that they were involved in moving cargo to be loaded on a ship,[15] by no stretch of the imagination can it be said that they were "incurring a seaman's hazards" in their exposure to the stevedore's shore based forklift on the dock and its screw auger in the railroad car. They were incurring only the hazards of any shore based worker using the same or similar shore based equipment ashore and nothing more. Both were injured ashore by a shore based hazard and not by any hazards peculiar to the work of seamen.

Certainly, it cannot be said that the conditions of their employment was in any way comparable to those of a true seaman's employment which as this Court said in *Mahnich* makes a true seaman "a ward of the admiralty" who "is subject to the rigorous discipline of the sea, and all the conditions of his service constrain him to accept, without critical examination and without protest, working conditions and appliances as commanded by his superior officers."[16] These are the employment conditions upon which a shipowner's rigid liability without fault for unseaworthiness is based. Even the wildest imagination, stretched to

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15. In *Sieracki*, this Court stated that "historically the work of loading and unloading is the work of the ship's servants, performed until recent times by members of the crew." 328 U.S. 85, at page 86, 90 L.Ed. 1099, at page 1107, 66 S.Ct. 872 (1946). While there may have been such work by members of the crew of vessels in the early days of the republic, historically it appears that in fact the ancient counterparts of the modern day longshoremen's unions existed in Rome at least as far back as the time of Christ. See, Tetrault, Seaman, Seaworthiness, and Rights of Harbor Workers, 39 Corn. L. Q. 381, at pages 413-14 (1954) and Shields & Byrne, Application of the "Unseaworthiness" Doctrine to Longshoremen, 111 U. of Pa. L. Rev. 1137, at pages 1140-47 (1963).

16. *Mahnich v. Southern Steamship Company*, 321 U.S. 96, at page 103, 88 L.Ed. 561, at page 567, 64 S.Ct. 455 (1944).

its breaking point, could not seriously contend that either Longshoreman Law or Longshoreman Chagois faced any such employment conditions. Both were free to accept or reject both their working conditions and the equipment furnished.

As the very foundation on which the shipowner's unseaworthiness liability to true seamen is based is not present in this case, it is respectfully submitted that its unwarranted and unrealistic extension by the Court below should be reversed.

SHIPOWNER'S WARRANTY OF SEAWORTHINESS EXTENDS ONLY TO THE VESSEL'S OWN SEAGOING CARGO GEAR

While this Court has extended the shipowner's warranty of the seaworthiness of its vessel to some pieces of a ship's seagoing cargo gear furnished by a stevedore, in each instance

(1) The gear furnished by the stevedore was seagoing cargo gear usually and customarily found aboard and furnished by the ship

and

(2) The gear furnished by the stevedore was incorporated into and made a part of the ship's seagoing cargo gear aboard the vessel at the time of the accident.

Petterson involved a cargo block, ordinarily a part of the vessel's own seagoing cargo gear, which was supplied by the stevedore and had been incorporated into the

ship's own gear at the time it broke and injured the longshoreman.[17]

Rogers involved a cargo runner attached to the vessel's winch, also ordinarily furnished by the ship as a part of its own seagoing cargo gear but on this occasion furnished by the stevedore. It had been incorporated into the ship's own seagoing cargo gear when it malfunctioned by rewinding on the vessel's winch drum and injured the longshoreman.[18]

Italia involved a hatch covering (tent), ordinarily a part of the vessel's own cargo gear which was supplied by the stevedore. It had been incorporated into the ship's own seagoing cargo gear when a rope on the hatch covering broke and injured the longshoreman.[19]

All three of these cases involved injuries to longshoremen aboard the vessel while they were not only "doing a seaman's work" but were "incurring a seaman's hazards" as well. None of them involved shore based equipment being used exclusively ashore such as Law's forklift or the screw auger being used to unload the railroad car in *Chagois*. What these three cases demonstrate is that to the extent the shipowner permits a stevedore to replace the ship's own seagoing cargo gear aboard the vessel with like equipment supplied by the stevedore, the shipowner warrants the seaworthiness of that replacement gear.

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17. *Alaska Steamship Company, Inc. v. Petterson*, 347 U.S 396, 98 L.Ed. 798, 74 S.Ct. 601. (1954), affirming 205 F.2d 478 (9 Cir. 1953).

18. *Rogers v. United States Lines*, 347 U.S. 984, 98 L.Ed. 1120, 74 S.Ct. 849 (1954), reversing 205 F.2d 57 (3 Cir. 1953).

19. *Italia Societa Per Azioni di Navegazione v. Oregon Stevedoring Company, Inc.*, 376 U.S. 315, 11 L.Ed.2d 732, 84 S.Ct. 748 (1964).

Despite this Court's very limited extension of the shipowner's warranty to stevedore equipment thus incorporated into and made a part of the ship's seagoing cargo gear, the Court below has concluded that this Court either has, or would, extend the warranty without limit to any and all shore based equipment which might be involved in moving cargo on the dock or on the land if that cargo is to be loaded on, or has been unloaded from, a vessel. *Petterson, Rogers* and *Italia* do not sanction any such unlimited extension of the shipowner's warranty of the seaworthiness of its vessel. Indeed, they could not without completely rejecting the very basis on which this Court relied in *Sieracki, Hawn* and *Gutierrez* in extending the shipowner's warranty to certain shore based workers in the first place.

It is respectfully submitted that *Petterson, Rogers* and *Italia* establish the fair, reasonable and realistic extent to which a shipowner's warranty of the seaworthiness of its vessel should be extended to equipment furnished by the stevedore, and this Court should decline to extend the warranty to shore based equipment simply because it is used in moving cargo.

ATTEMPTED JUSTIFICATION FOR EXTENSION OF WARRANTY ASHORE IS UNSOUND

The Court below recognized the "harshness of the principle" it espoused in extending the shipowner's warranty of the seaworthiness of its vessel to the stevedore's shore based equipment. It attempted to justify such an unrealistic result on the ground that the shipowner would be able to pass this liability on to the stevedore. (A. 101-102) Or stated more realistically and more demonstrably,

its justification was that it matters not how ridiculous or how absurd or how harsh the law becomes in extending a shipowner's unseaworthiness liability because some third party will have to pay the damages for which the shipowner is allegedly liable anyway!

The injustice of this approach is obvious—the stevedore is saddled with liability without fault to its own employees for injuries resulting from purely shore based hazards which are no different from the shore based hazards faced by shore based employees in the railroad and trucking industries, in the grain elevator business, in warehouse operations and in the building materials trade, to name only a few. The shore based hazards are the same, but a vessel at the dock which the law may hold liable for only a moment—a moment long enough to require the stevedore to pay the damages—singles out the stevedore for treatment which is unknown to any other employer whose employees incur the same shore based hazards from the same types of shore based equipment.[20] And while thus singled out the stevedore at the same time is equally liable to pay workmen's compensation benefits under the laws of the state where the injury occurs!

Completely land locked workers, in most instances far removed from any navigable waters, encounter precisely the same hazards as those incurred by longshoremen in using like equipment on the docks and in dockside warehouses.

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20. For example, a railroad or a truck line is not held liable to pay damages to a grain elevator employee who is injured while using the grain elevator's screw auger in discharging a railroad car or a motor truck on the theory that it can pass this liability on to the grain elevator as the injured man's employer, since the grain elevator supplied the equipment.

For example, first, the Court of Appeals decision in which the warranty has been extended:

1. Forklifts of the type in this case are used in almost every warehouse in the country, not only for moving freight inside them but in loading and unloading truck and rail cars as well.

2. The grain conveyors and screw auger of *Chagois* find their counterpart at grain elevators throughout the land.[21]

3. The hopper in *Spann*[22] used to load the vessel's cargo into trucks was of the type used by building material firms and mining companies operating strictly on land to load trucks with sand, gravel, ready mixed cement, coal, caliche, etc.

4. The straddle carriers in *Gebhard*[23] are also used in strictly land based operations when no vessels are at the docks in moving the containers in the marshalling yards and in loading and unloading the containers from the motor trucks which bring them to or take them from the marshalling yards. Similar straddle carriers are also used by other industries, such as for the movement of large amounts of finished lumber in a lumber yard.

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21. An earlier decision from the Court of Appeals below also involved a grain conveyor used in unloading a barge. *Defjes v. Federal Barge Lines, Inc.*, 5 Cir. 1966, 361 F.2d 422, cert. den. 385 U.S. 969, 17 L.Ed.2d 433, 87 S.Ct. 504 (1966).

22. *Spann v. Lauritzen*, 3 Cir. 1965, 344 F.2d 204, cert. den. 382 U.S. 938, 15 L.Ed.2d 348, 86 S.Ct. 386 (1965).

23. *Gebhard v. SS HAWAIIAN LEGISLATOR*, 9 Cir. 1970, 425 F.2d 1303.

Secondly, for example the Court of Appeals decisions in which the warranty has *not* been extended:

1. Three decisions of the Court of Appeals for the Second Circuit[24] involved temporary skids attached to the dock on which cargo being discharged from the ship was landed and then taken into the warehouse. These are comparable to temporary attachments to landing platforms over which trucks and rail cars are loaded or unloaded.
2. *Forkin*[25] involved a rope being used to hoist a conveyor into place to discharge baggage from a ship which is not unlike the method of hoisting similar conveyors in warehouses throughout the country.
3. The shoreside crane in *McKnight*[26] is of a type used to make heavy lifts in manufacturing plants and for loading or unloading such lifts from trucks or rail cars.
4. The rope and the lifting device in the warehouse in *Daniel*[27] finds its counterpart in countless land locked warehouses.

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24. *Penoro v. Rederi A/B Disa*, 2 Cir. 1970, 422 F.2d 392; *Tarabocchia v. Zim Isreal Navigation Co., Ltd.*, 2 Cir. 1969, 417 F.2d 476, remanded for reconsideration on other grounds, U.S. 28 L.Ed.2d 211, 91 S.Ct. 914 (1971); *Fredricks v. American Export Lines, Inc.*, 2 Cir. 1955, 227 F.2d 450, cert. den. 350 U.S. 989, 100 L.Ed. 855, 76 S.Ct. 475 (1956).

25. *Forkin v. Furness, Withy & Co., Ltd.*, 2 Cir. 1963, 323 F.2d 638.

26. *McKnight v. N. M. Patterson & Sons, Ltd.*, 6 Cir. 1960, 286 F.2d 250, cert. den. 368 U.S. 913, 7 L.Ed.2d 130, 82 S.Ct. 189 (1961).

27. *Daniel v. Skibs A/S Hilda Knudsen*, 3 Cir. 1966, 368 F.2d 178, cert. den. 386 U.S. 990, 18 L.Ed.2d 335, 87 S.Ct. 1304 (1967).

5. Tractors, such as the one used in *Weigal*[28] to move the railroad cars on the dock perform the same function alongside warehouses far removed from any docks or vessels.

To the extent that a stevedore's gear is used in place of the vessel's seagoing cargo gear and has been incorporated into it, there is some basis for extending the shipowner's warranty of seaworthiness to it because those shore based workers who might be injured by it are incurring a true seaman's hazards—hazards which are peculiar to the vessel itself.

But if our cherished concept of "Equal justice under law" is not to become an idle dream for the stevedore, it cannot be subjected to liability without fault as to its shore based equipment—a liability that none of its shoreside counterparts using the same or similar equipment must endure. It is a strange, peculiar and unsound rule of law which can justify imposing liability on the shipowner primarily, if not entirely, because it is the stevedore, and not the shipowner, who must respond in damages.

It is respectfully submitted that for its shore based equipment and the shore based hazards which their shore based employees incur, the stevedore should be accorded the same treatment under the law as that accorded other shore based employers using the same or similar equipment. The decision of the Court below fails to accord this equality of treatment and should therefore be reversed.

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28. *Partenweederei, MS Belgrano v. Weigel,* 9 Cir. 1962, 299 F.2d 897, cert. den. 371 U.S. 830, 9 L.Ed.2d 67, 83 S.Ct. 49 (1962), reh. den. 371 U.S. 906, 9 L.Ed.2d 168, 83 S.Ct. 205 (1962), motion for leave to file second petition for reh. den. 375 U.S. 871, 11 L.Ed. 2d 101, 84 S.Ct. 26 (1963).

EXTENSION OF ADMIRALTY TORT JURISDICTION TO ACCIDENTS ON LAND IS UNPRECEDENTED

While this point is covered in considerable detail in the briefs filed by the parties, a few brief comments seem appropriate. The Constitutional grant of admiralty tort jurisdiction under Article III, Section 2, has traditionally been bounded by locality and not construed to include personal injuries occurring on the land.[29] Congress, by the Extension in Admiralty Act,[30] included all cases of injury "caused by a vessel on navigable water" even if done or consummated on land, but this Court, as recently as 1969, noted that injuries on the pier by pier-based equipment would be outside the purview of the extension statute.[31]

Unseaworthiness is merely a remedy or doctrine of liability available to "Sieracki-seamen" as well as crewmembers.[32] This court has never held that it affords an inde-

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29. *DeLovio v. Boit*, CC D Mass., 2 Gall 398, 7 Fed. Cas. No. 3776 (1815); *Philadelphia, Wilmington & Baltimore RR v. The Philadelphia & Harve De Grace Steam Towboat Co.*, 23 How 209, 16 L.Ed. 433 (1860); *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469, 66 L.Ed. 321, 42 S.Ct. 157 (1922).

30. 62 Stat. 496, 46 U.S.C. § 740.

31. *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 24 L.Ed. 2d 371, 90 S.Ct. 347 (1969), reh. den. 397 U.S. 929, 25 L.Ed.2d 109, 90 S.Ct. 895.

32. *Usner v. Luckenbach Overseas Corp.*, 400 U.S. 494, 27 L.Ed. 2d 562, 91 S.Ct. 514 (1971);

> Seamen, by contrast to longshoremen, have been given a statutory right to damage actions against their employer in lieu of workmen's compensation coverage. This includes all injuries sustained in the course of their employment, as crewmembers, whether at sea or on land.

O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 87 L.Ed. 596, 63 S.Ct. 488 (1943).

Compare:

> 44 Stat. 1424, 33 U.S.C. § 903(a)(1)

pendent basis for invoking the admiralty and maritime jurisdiction of the United States in cases occurring upon the land and not caused by a vessel, her gear, appurtances or cargo.[33]

The problems created by substituting a "status" for a "situs" test of admiralty tort jurisdiction are exemplified by the lower court opinions in the case *sub judice* and the many conflicting decisions cited therein and also by the parties upon this appeal. The choice which has been made below was rejected by this Court in *Nacirema Operating Co.*, involving longshoremen's rights under 33 U.S.C. §901 et seq, for the same reason it should be rejected in this case—such a rule

> ". . . simply replaces one line with another whose uncertain contours can only perpetuate on the landward side of the Jensen Line, the same confusion that previously existed on the seaward side."[34]

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33. The subject is thoroughly discussed by Judge R. Dorsey Watkins of the District of Maryland in *Paisley Green v. Pope & Talbot, Inc.*, Admiralty No. 4809, U.S.D.C. Maryland, and four companion cases decided April 6, 1971, as yet unreported; Also see the opinion of Judge Wright in *Gebhard v. SS HAWAIIAN LEGISLATOR*, 9 Cir., 1970, 425 F.2d 1303, at page 1313 (dissenting).

34. *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, at page 223, 24 L.Ed.2d 371, at page 380, 90 S.Ct. 347 (1969), reh. den. 397 U.S. 929, 25 L.Ed.2d 109, 90 S.Ct. 895.

CONCLUSION

For the foregoing reasons, the National Maritime Compensation Committee respectfully submits the judgment of the Court below should be reversed.

Respectfully submitted,

E. D. VICKERY
Royston, Rayzor & Cook
3710 One Shell Plaza
Houston, Texas 77002

DENNIS LINDSAY
Lindsay, Nahstoll, Hart, Duncan, Dafoe & Krause
Ninth Floor, Loyalty Building
Portland, Oregon 97204

FRANCIS A. SCANLAN
Kelly, Deasey & Scanlan
926 Four Penn Center Plaza
Philadelphia, Pennsylvania 19103

J. STEWART HARRISON
Brobeck, Phleger & Harrison
111 Sutter Street
San Francisco, California 94104

Counsel for National Maritime Compensation Committee

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Brief have been served on counsel for all parties herein by depositing the same in a United States mail box with first class air mail postage prepaid, addressed to counsel of record at the following post office addresses on the 8th day of September, 1971.

GEORGE F. WOOD
510 Van Antwerp Building
Mobile, Alabama 36602
Counsel for Petitioners
Victory Carriers, Inc. and
SS SAGAMORE HILL

T. K. JACKSON, JR.
W. BOYD REEVES
1101 Merchants National Bank
Building
Mobile, Alabama 36602
Counsel for Petitioner
Gulf Stevedore Corp.

ROSS DIAMOND, JR.
610 Van Antwerp Building
Mobile, Alabama 36602
Counsel for Respondent

E. D. Vinke

Of Royston, Rayzor & Cook